publication in any ordinary sense is not the test. Long-continued public renditions of a drama or lecture may in fact publish it far more extensively than its sale as a book. What is really a confusion is the result of a flexible construction of the word "publication," amounting practically in some instances to the total abrogation of its meaning. This flexibility of construction is believed to be due to an inclination to circumvent as much as possible the original interpretation of the copyright statutes.

The result of this analysis has an important bearing on the much disputed question whether at common law as unaffected by statute there exists an exclusive right of publication in perpetuity. Intrinsically there might be. A man's ideas are his own until he imparts them to others, but then unquestionably they become irredeemably shared by the recipients. Yet the law, while recognizing that the ideas are no longer the author's alone, could nevertheless recognize a reservation by the author of the exclusive right of publication, and restrain any inconsistent use of those ideas. Whether it should refuse to restrain such a use is a question of policy, just as the law, for reasons of policy, refuses to enforce certain conditions attempted to be imposed on the alienation of tangible property. That the law does recognize and enforce such a condition to a limited extent in all cases of literary property seems clear from the authorities. The courts, while purporting to deny the common law right on account of the statute, by their varying construction of the word "publication," have in fact recognized its complete existence in certain cases. That there is such a common law right is further supported by a modern class of cases which hold that the most extensive publication of news by machines known as "tickers" does not destroy the exclusive rights of the original owner.[9] As ordinary news is not the subject of copyright, these cases must depend on common law principles. They are clearly right on policy. If a receiver of such news were allowed to republish by "tickers" of his own, it would be destructive to the continuance of this highly valuable mode of disseminating news, since the first company could not compete with rivals whom it supplied with information. It must be remembered that the copyright statutes themselves are a legislative recognition of the justice of the right of exclusive publication for a considerable period of time. Upon the whole, therefore, whatever the true effect of the copyright statutes, those cases seem sound which recognize a common law right of exclusive republication.

DOWER IN MORTGAGED LAND REDEEMED AND SOLD BY EXECUTOR FOR PAYMENT OF DEBTS. — By express statute in England, and by statutory enactment or judicial decision in most American jurisdictions, dower is allowed in an equity of redemption. Another common statute, enacted for the benefit of creditors, allows the court to order the executor to sell the testator's realty, if necessary, for the payment of his debts. By the weight of American authority, in some states regulated by statute, the mortgagee must realize first on his security, and then prove against the personal estate only for the excess of the mortgage debt over the value of the security.[1] Consistently with this rule of fairness to the general creditors, it has been

[9] National, etc., Co. *v.* Western, etc., Co., 119 Fed. Rep. 294; Kiernan *v.* Manhattan, etc., Co., 50 How. Pr. (N. Y.) 194.

[1] See Woerner, Administration, 2d ed., § 408.

held that the widow, having joined with her husband in the mortgage, cannot require the executor to exonerate the land out of the personalty.[2] For the same reason, moreover, an order of the court allowing the executor to sell the testator's realty does not allow him to discharge the mortgage and to sell the unincumbered land. Thus, on the settlement of his accounts, he is not entitled to a credit for the amount so paid in discharge of the incumbrance.[3] Similarly, the executor cannot maintain a bill to remove a cloud on the testator's title, inasmuch as his right is confined to the sale of the exact estate which the testator had.[4] If, now, the executor redeems, the legal title vests, by process of law, in the heirs and the widow. The purchaser, therefore, gets nothing, since the equity of redemption has disappeared and the legal title is in the heirs and the widow. What rights in equity the disappointed purchaser may have is a difficult question. One solution has been the following: The mortgage has been discharged by the officious act of the executor, and obviously there is no reason why the heirs should take the unincumbered land to the exclusion of the widow. As against the purchaser, also, who took no legal title at the executor's sale, there seems no reason for denying the widow's right to dower in the land. The conclusion of this reasoning is to give the widow dower in the land, because no other claimant shows a better right.[5] Such was the decision reached in a recent case. *Casteel* v. *Potter*, 75 S. W. Rep. 597 (Mo., Sup. Ct.).

This result, it is submitted, is undeserved as regards the widow, and unjust to the purchaser, whose purchase money went to discharge the incumbrance and to satisfy the testator's debts. The purchaser paid his money in the belief that he was getting a clear title. The legal title, however, could not be passed under an order of the court to sell merely the testator's realty, as that consisted only of an equity of redemption. The equity of redemption, moreover, which the executor could have sold subject to the widow's dower, was extinguished by the redemption and could not pass to the purchaser. The purchaser, it would seem, took nothing by the sale. But since the purchase money has been applied to the payment of the incumbrance and the debts of the testator, the purchaser should not be remediless. It has been held that the purchaser, as against the enriched estate, would be subrogated to the rights of the satisfied incumbrancer and creditors, and could exercise their right to demand that the land be sold to reimburse him.[6] The basis of the purchaser's right of subrogation is the satisfaction of the incumbrancer and the creditors out of the purchase money, which unjustly enriched the estate. A precisely similar case of unjust enrichment occurs when, without contribution, the widow gets dower in the unincumbered land; and the reasons for subrogation against the widow seem quite as strong. By this rule of subrogation, the mortgage, so to say, revives in equity, and the purchaser gets the mortgagee's right to keep the legal title till the amount of the incumbrance is reimbursed him, together with the right which the satisfied creditors had to have the equity of redemption sold for their benefit. It is unfortunate that the authority of an earlier Missouri decision[7] bound the court to deny a rule which combines substantial justice and sound principle.

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[2] Hewitt *v.* Cox, 55 Ark. 225.
[3] Pryor *v.* Davis, 109 Ala. 117.
[4] Phelps *v.* Funkhouser, 39 Ill. 401.
[5] Hastings *v.* Stevens, 29 N. H. 564.
[6] Blodgett *v.* Hitt, 29 Wis. 169.
[7] Jones *v.* Bragg, 33 Mo. 337.